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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

APR 26 2012

D. MARK JONES, CLERK
BY _____
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	
	:	Case No. 2:12-CV-00161 BSJ-SA
Petitioner,	:	
	:	
v.	:	REPORT & RECOMMENDATION
	:	
SCOTT ANDREW MACCAUGHERN,	:	Judge Bruce S. Jenkins
	:	
Respondent.	:	Magistrate Judge Robert T. Braithwaite

On February 8, 2012, the United States of America filed a petition to enforce its October 20, 2011 IRS Summons (“the Summons”) pursuant to 26 U.S.C. §§ 7402(b) and 7604(a). Judge Jenkins issued an Order to Show Cause (“OTSC”) on February 16, 2012, which referred this matter to Magistrate Judge Alba for a hearing scheduled for April 9, 2012. Magistrate Judge Wells later agreed to cover that hearing for Magistrate Judge Alba in his absence.

The OTSC directed Respondent to file a written response supported by sworn affidavits to the United States’ Petition to Enforce the Summons (“the Petition”) within ten days of the OTSC being served upon him. The OTSC also directed the Magistrate Judge to convene a hearing on April 9, 2012 at 10:00 a.m. to hear any arguments that would assist the Court in determining whether Respondent has shown cause as to why he should not be ordered to comply with the Summons.

The OTSC also required the IRS or a United States Marshal to serve a copy of the OTSC and Petition upon Respondent pursuant to Fed.R.Civ.P. 4, or if not feasible, “by any other means reasonably calculated to notify Respondent of this action against him.” Docket No. 4 at 2. The OTSC warned that Respondent’s unexcused failure to appear will result in a warrant for his arrest. Docket No. 4 at 2. The United States’ reasonable efforts to accomplish this service of the OTSC and Petition are set forth in the return of service filed March 7, 2012 as Docket No. 5. Respondent did not timely file any written response with the Court to that service, nor has Petitioner been served with any such response.

As scheduled, on April 9, 2011, at 10:00 a.m., the Judge Wells convened a hearing on the OTSC at which Respondent did not appear, either in person or by counsel. The United States appeared through Assistant United States Attorney John K. Mangum, accompanied by Revenue Officer Tammy Ward. After hearing from AUSA Mangum, the Court issued a bench warrant for the arrest of Respondent. Respondent was arrested on the evening of April 23, 2012.

Respondent was brought to Court on April 24, 2012 and appeared before the undersigned Magistrate Judge. The United States then appeared through Assistant United States Attorney Jared C. Bennett, accompanied by Revenue Officer Tammy Ward and other IRS representatives. After the arguments and representations made in that follow-up April 24, 2012 hearing, I report the following:

1. The United States has carried its burden of proof to enforce the Summons. Through the Summons and the declaration of the revenue officer that were attached to the Petition, the United States established that: (1) it sought the summoned information for a legitimate purpose, (2) the summoned information is relevant to the legitimate purpose, (3) the summoned information was not already in the possession of the United States; and (4) that the

United States followed proper administrative procedures.

2. Once the United States has established its initial burden of proof, the burden shifts to Respondent to show why he should not be compelled to comply with the Summons. *United States v. Balanced Fin. Mgmt., Inc.*, 769 F.2d 1440, 1443-44 (10th Cir. 1985) (stating the respective burdens of the parties in enforcing an IRS summons). Respondent has failed to show cause as to why he should not be ordered to comply with the Summons.

Consequently, the undersigned recommends that:

1. The District Court find that Respondent has failed to show cause why he should not be compelled to comply with the Summons. In fact, he has agreed to comply therewith;

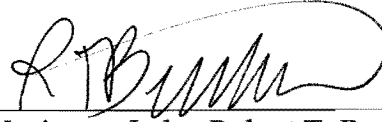
2. The District Court order Respondent to provide the documents required by the Summons to the IRS Officer, Tammy Ward, no later than 14 days after the District Court adopts this Report and Recommendation; and

3. The District Court order Respondent to appear before IRS Revenue Officer Ward, be placed under oath, and answer the Revenue Officer's questions within 14 days after providing the documents referenced in paragraph 2 above.

Within fourteen (14) days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. Pursuant to 28 U.S.C. § 636(b)(1)(C), the District Judge to whom this case is assigned shall make a *de novo* determination upon the record of any portion of the undersigned's disposition to which specific written objection has been made. The District Judge may accept, reject, or modify the recommended decision, receive further evidence, or re-commit the matter to the magistrate judge with instructions.

DATED this 26 day of April, 2012.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'R. T. Braithwaite', written over a horizontal line.

Magistrate Judge Robert T. Braithwaite

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a true and accurate copy of the foregoing REPORT & RECOMMENDATION was provided by first class mail to the party named below on the 24th day of April 2012.

Scott A. MacCaughern
6 Mountain Top Dr.
Park City, UT 84060

/s/ Jared C. Bennett